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No. 91-1113

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In The

Supreme Court of the United States

October Term, 1991

THE LEGISLATURE OF THE STATE OF CALIFORNIA, et al.,

Petitioners,

v.

MARCH FONG EU, et al.,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

OPPOSITION TO PETITION FOR CERTIORARI

DANIEL E. LUNGREN
Attorney General of the State of California

ROBERT L. MUKAI
Chief Assistant Attorney General

FLOYD D. SHIMOMURA
Assistant Attorney General (Acting)

DANIEL G. STONE
MANUEL M. MEDEIROS*
Deputy Attorneys General

P.O. Box 944255
Sacramento, California 94244-2550
Telephone: (916) 323-1996

Attorneys for Respondent March Fong Eu

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the provisions of article IV, section 2, of the California Constitution, limiting the number of terms that may be served by members of the California Assembly and Senate, represent a proper and lawful exercise of the sovereign power of the people of California to ensure that the membership of each of the constituent houses of their legislature is refreshed by regular turn over.

2. Whether Proposition 140, adopted by the voters of California on November 6, 1990, is a bill of attainder prohibited by article I, section 10, clause 1, of the United States Constitution.

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RELEVANT FEDERAL AND STATE CONSTITUTIONAL PROVISIONS

In addition to those federal and state constitutional provisions identified as relevant by petitioner, respondent would add the following:

United States Constitution, amendment IX:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

United States Constitution, amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

California Constitution, article IV, section 1.5:

> The people find and declare that the Founding Fathers established a system of representative government based upon free, fair, and competitive elections. The increased concentration of political power in the hands of incumbent representatives has made our electoral system less free, less competitive, and less representative.
>
> The ability of legislators to serve unlimited number of terms, to establish their own retirement system, and to pay for staff and support services at State expense contribute heavily to the extremely high number of incumbents who are reelected. These unfair incumbent advantages create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. These career politicians become representatives of the bureaucracy,

rather than of the people whom they are elected to represent.

To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed on the number of terms which may be served.

STATEMENT OF THE CASE

Proposition 140, "The Political Reform Act of 1990" (hereafter, the Act), was adopted by election of the people of the State of California as an amendment to their Constitution on November 6, 1990, pursuant to their reserved power of initiative. Cal. Const., art. XVIII, § 3. The Act added to and amended the state Constitution for the express purpose of restoring a free and democratic system of fair elections by bringing about a return to the ideal of the "citizen representative." Cal. Const., art. IV, § 1.5. Through the Act, the people sought to achieve this goal by, *inter alia*, reimposing a ceiling on the Legislature's budget;[1] restricting retirement benefits based on legislative service;[2] and limiting the number of terms which persons may serve in constitutional offices.[3]

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[1] Cal. Const., art. IV, § 7.5

[2] Cal. Const., art. IV, § 4.5

[3] Cal. Const., art. IV, § 2 [legislators]; art. V, § 2 [Governor]; art. V, § 11 [Lieutenant Governor, Attorney General,

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Following adoption of the Act, suit was filed in the California Supreme Court to invalidate the initiative measure.[4] Petitioners therein were the state Legislature and its two constituent houses, individual legislators and voters, and various organizations. None of California's constitutional officers other than legislators joined in the petition. A-1, *post*. In the state proceedings, Petitioners raised both state and federal issues. In their petition to this Court, Petitioners correctly identify the federal issues which they *alleged* in their petition to the state court. Pet. at 5. However, the Court should be aware that Petitioners did not pursue all claims, neither briefing nor arguing the alleged violation of the Guaranty Clause of article IV, section 4, of the Constitution.[5]

On October 10, 1991, the California Supreme Court issued its opinion in the litigation: *Legislature v. Eu*, 54 Cal.3d 492 (1991). Insofar as is relevant to these proceedings, the court rejected Petitioners' contention that the term-limitation provisions of the Act violated rights guaranteed to legislative candidates and to voters by the First and Fourteenth Amendments of the Constitution, and the

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Controller, Secretary of State, Treasurer]; art. IX, § 2 [Superintendent of Public Instruction]; art. XIII, § 17 [members of the state Board of Equalization].

[4] A copy of that pleading is reproduced herein as an Appendix, pages A-1 through A-18.

[5] Petitioners similarly do not discuss the Guaranty Clause in their petition to this Court.

court further held that the Act did not amount to a bill of attainder.[6]

On the issue of First and Fourteenth Amendment rights, the court applied the test articulated by this Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), finding that compelling public interests supported the people's decision to limit legislative terms of office and that these compelling interests outweighed the impact which the limitation might have on some candidates and voters. *Legislature v. Eu, supra*, 54 Cal.3d at 517-522. The court also found that the limitation on legislative terms was the least restrictive alternative necessary to accomplish the people's desired goal, concluding that "[r]ealistically, only a lifetime ban could protect against various kinds of continued exploitation of the 'advantages of incumbency' captured through past terms in office." *Id.* at 522-524.

The Supreme Court also rejected Petitioners' bill-of-attainder claim. Contrary to Petitioners' suggestion to this Court, however, the state court's decision was not grounded on the fact that it could find no case in which term limitations have been held to be a form of punishment. See Pet. at 6. In actuality, the court stated:

> Proposition 140 applies with equal force to all state legislators, current and future. Although it

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[6] Although not raised as an issue in this proceeding, but see No. 91-1114, the Supreme Court held that, for incumbent legislators continuing to serve on or after November 6, 1990, those provisions of the Act limiting future accrual of retirement credits for legislative service constituted an unconstitutional impairment of contract obligations. *Legislature v. Eu, supra*, 54 Cal.3d at 527-534.

> is unquestionable that proponents sought to limit the terms of incumbent legislators, including such long-term legislators as [Speaker of the Assembly] Brown and [President Pro Tem of the Senate] Roberti, we find no evidence of an intent to single out and *punish* those individuals for any supposed misconduct on their part. Accordingly, we conclude that Proposition 140 does not constitute a bill of attainder under the Federal Constitution.

Legislature v. Eu, supra, 54 Cal.3d at 527 (emphasis in original).

Petitioners below have now petitioned this Court to review the decision of the California Supreme Court insofar as that court held that the Act does not constitute an unlawful bill of attainder, and insofar as the court held that a limitation on legislative terms of office does not impermissibly deprive Petitioners of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution. Respondent respectfully submits that the dispute does not warrant this Court's attention at this time.

As will be demonstrated, the first election wherein the Act will have any legal effect will not occur until November 1996 and, for some, not until November 1998. Senators newly elected in November 1990 must still face re-election in November 1994; mid-term Senators must face re-election in November 1992; and all Members of the Assembly must face re-election in November 1992 and November 1994 before facing a re-election bar because of the Act.

It cannot reasonably even be argued that there is an immediate threat to First or Fourteenth Amendment rights. If in the future such an immediate threat could credibly be alleged, federal district courts will be available to test the allegation.

Respondent does not deny that the Act presents important issues for ultimate disposition by this Court – at an appropriate time. However, the term-limitation provisions of the California Act are the first such provisions to be litigated in any court, and they do not yet operate to restrict the re-election of any incumbent California legislator.

As Petitioners acknowledge, term limits have become a matter of increasing national interest.[7] Pet. at 7.[8] By deferring consideration of the constitutional challenge raised by Petitioners herein, this Court would likely be aided by the analyses of more state or federal courts offering a variety of analytical methodologies illuminating the issue.[9] Moreover, even if "strict scrutiny" of term

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[7] See e.g., Geo. Will, *Term-Limit Momentum*, The Washington Post, January 2, 1992, Editorial Section, p. A23.

[8] Petitioners suggest that the growing national interest in term limits is analogous to the national interest in loyalty oaths. Respondent submits, however, that the apparent trend toward term limitations is more accurately compared to the trend in the early part of this century where the people of several states, frustrated with their legislatures, reserved to themselves the powers of direct legislation and referendum. See 42 Am.Jur.2d, Initiative & Referendum, § 1, p. 649.

[9] By the time this Court undertook consideration of the constitutional challenge to the power of direct legislation, for

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limitations is the exclusive test required of any court, as Petitioners contend, no injustice flows from denial of the instant petition because it is evident that the California Supreme Court did strictly scrutinize the term limitation provisions of the Act, as will be demonstrated *post*.

Respondent thus urges the Court to deny the petition for the reason that there is presently no immediate threat to the constitutional rights of the petitioning legislator and the petitioning voters. With respect to the state Legislature, the organizational petitioners, and several of the individual petitioners, Respondent will show that the petition should be denied for manifest lack of standing.

REASONS FOR DENYING CERTIORARI

I

CONSIDERATION OF THE CONSTITUTIONAL ISSUES RAISED IN THE PETITION IS NOT PRESENTLY NECESSARY

A. None of the Petitioning Legislators or Voters Faces An Imminent Threat To First or Fourteenth Amendment Rights

The term limitation provisions of the Act operate prospectively only. They apply "only to terms to which persons are elected or appointed on or after November 6, 1990, except that an incumbent Senator whose office is

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example, the Court had the benefit of several state court analyses of the issue. See *Pacific States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 131 (1912).

not on the ballot for the general election on that date may serve only one additional term." Cal. Const., art. XX, § 7.

California Senators serve four-year terms; half of the California Senate is elected every two years. Cal. Const., art. IV, § 2(a). Incumbent Senators who did not stand election in November 1990 are, accordingly, permitted to serve out the remaining two years of their present term and to run again, in 1992 or, if unsuccessful in 1992, then in any election thereafter, for another four-year term. Thus, if they are successful in 1992, these individuals will not be confronted with the term limitation bar of the Act until 1996. Assuming that Senators in this category are faced with the bar in 1996, i.e., that they were re-elected to office in 1992, these Senators would still not be precluded from running for other public office. They could run for Assembly, for example; they could run for any statewide elective office in the Executive Branch of state government; they could run for local office; or they could run for Congress.

Persons elected or re-elected to the Senate in November 1990 may serve the entirety of their four-year term, and they are free to run for an additional *four-year* term in 1994 or, if unsuccessful in that election, at another election thereafter. Senators in this category, then, assuming they are re-elected in 1994, would serve until *1998* before the Act would bar further service in the Senate. And, of course, these persons, too, would thereafter be free to run for any elective office other than Senate.

All members of the California Assembly are elected every two years. Cal. Const., art. IV, § 2(a). Persons elected to the Assembly in November 1990 may serve

their present two-year term, run for re-election in November 1992 and, if re-elected, serve a second two-year term of office, run for re-election in November 1994 and, if re-elected, serve a third two-year term of office. Should any member decline to run in one or more of these elections, he or she would be free to run for re-election in November 1996 or thereafter. Only members who serve three, consecutive, two-year terms between November 1990 and November 1996 would be barred from holding office in the Assembly thereafter. Here again, however, no such individual would be precluded from holding office in the Senate, in the Executive Branch of government, or in any city or county government, or in Congress.

Of course, in the proceedings below, each of the petitioner legislators who claims an infringement on his or her right to hold office alleged an intention to run for the same office in 1996 or 1998, as the case may be, and swore this to be so in declarations under penalty of perjury. However, for purposes of legal analysis, such declarations can hardly be given much weight. "The process of prediction in the political arena is fraught with difficulties, to which many unsuccessful candidates can most eloquently testify." *Honneywood v. Rockefeller*, 214 F.Supp. 897, 902 (E.D.NY 1963).

Indeed, legislative districts were recently reconfigured by the California Supreme Court in *Wilson v. Eu*, ___ Cal.3d ___, 1992 Cal LEXIS 6 (Jan. 27, 1992; No. S022835), wherein the court adopted, with minor exceptions, the redistricting plan proposed by appointed special masters. As a result, constituencies before whom any of the petitioning legislators would have to run in 1996 or

1998 are, in many cases, quite different from those by whom they were elected in November 1990. Moreover, in some cases, more than one incumbent presently finds himself or herself residing in the same legislative district configured by the special masters. Indeed, such is the case for Senator Roberti, one of the petitioners herein. Rather than compete against a fellow Democratic incumbent for the same Senate seat, Senator Roberti has reportedly chosen to run for election in an entirely new Senate seat recently vacated by an incumbent in connection with a guilty plea on federal corruption charges.[10] In this election, Senator Roberti will be seeking the support of an entirely new constituency.

Similarly, Assemblymember Roybal-Allard, one of the Petitioners herein, despite her alleged and sworn intention to run for Assembly in 1996, was reported to be considering a run for a new congressional seat resulting from the redistricting.[11] She is also reportedly considering the alternative of running for election in a newly created Senate seat.[12] Petitioner Castillo's interest in the litigation below was her alleged desire to vote for Assemblymember Roybal-Allard for Assembly. A-7, ¶ 26, *post*. That interest disappears, of course, should Ms. Roybal-Allard choose not to run for Assembly at all in 1992.

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[10] See Ingram, *Sen. Roberti Leaning Toward Running In Robbins' District*, The Los Angeles Times, January 29, 1992, Metro Section, Part B, p. 8, col. 2.

[11] Muir, *Reapportionment Shuffles the Political Deck*, The Los Angeles Times, January 3, 1992, Metro Section, Part B, p. 1., col. 2.

[12] *Ibid.*

In short, it is simply not credible for any of the petitioning legislators to allege that their asserted right to run for Senate, as an example, will be infringed *in 1996 or 1998*. Even without the changes worked by redistricting, any one of these legislators might choose to run for another office, or might choose not to run for Senate at all.[13] The same, of course, is true of the petitioning members of the Assembly.

Likewise, especially in light of changes worked by redistricting, it is simply not credible that voters can prospectively claim an infringement on the right to vote for an identified incumbent *five or seven years hence*. Moreover, the "right" of any of these petitioner voters to vote for a particular candidate is necessarily dependent upon the choice of that candidate to run for office – a contingency which the individual voter cannot easily control. Petitioner Steele, for example, submitted a declaration below wherein he swore his intention to vote for Senator Milton Marks in 1992 and 1996. Appx. to Mem. Points & Auth. in Support of Pet., Tab. No. 27. But there was no evidence whatsoever presented that Senator Marks intends to or will run again for Senate in 1992 or 1996. Similarly, in the proceedings below, petitioner Wallace

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[13] Petitioner Cecil Green, for example, has announced his intention, for reasons apparently related to health, not to seek reelection to the Senate. *State Sen. Green Announces He Will Not Run For Reelection*, The Los Angeles Times, February 1, 1992, Part A, p. 21, col. 1. In addition, Petitioner Ed Davis, has announced his intention not to seek reelection. Cheevers and Gladstone, *Ed Davis Calls It Quits: "I Have Served Long Enough,"* The Los Angeles Times, January 29, 1992, Metro Section, Part B, p. 1, col. 2.

alleged a violation of his right to vote for Assemblymember Hannigan and Senator Keene in 1996 and 1998. A-9, ¶ 31, *post*. However, neither Hannigan nor Keene was a petitioner below, and there was no evidence that either individual intends to run again for the office he presently holds.

Until such time as it becomes clear that one or more of petitioning legislators is actually prevented from being a candidate for an office by virtue of the term-limitation provisions of the California Constitution, protestations of future intent to run are necessarily pure speculation – insufficiently concrete to make out a case or controversy cognizable under article III. *Renee v. Geary*, 111 S.Ct. 2331, 2339-2340 (1991).[14]

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[14] A number of coincidences may figure in a candidate's ultimate decision to run for a particular legislative seat. At the time he joined this action, for example, petitioner Roberti was the incumbent Senator for the 23rd Senate District. See A-3, ¶ 4, *post*. However, as a result of redistricting by the California Supreme Court, Senator Roberti has decided to run in the special election to fill the vacancy in the 20th Senate District. See Ingram, note 10, *supra*. That seat was vacated in 1991 by its incumbent, Senator Robbins, in connection with a guilty plea to federal criminal charges. If successful in the special election, Senator Roberti will serve out the remaining two years of Senator Robbins' four-year term.

This situation could present issues requiring further construction of the California Constitution by the state courts. Under the Act, the term limitations "apply only to terms to which persons are elected or appointed on or after November 6, 1990, except that an incumbent Senator whose office is not on the ballot for the general election on that date may serve only *one additional term*." Cal. Const., art. XX, § 7 (emphasis

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As this Court has observed: " 'It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers . . . should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.' " *Gregory v. Ashcroft*, 111 S.Ct. 2395, 2400 (1991), quoting *Taylor v. Beckham*, 178 U.S. 548, 570-571 (1900). Proper recognition of the reserved rights of California and its people, U.S.Const., amend. IX, amend. X, requires that federal courts refrain from intruding in this unique area of sovereignty unless and until it is clearly necessary to do so.

At a minimum, therefore, federal courts, including this Court, should await proof that a petitioning incumbent has, in fact, been denied an opportunity to appear on the ballot, *solely* by virtue of the California Constitution's term limitations. In such a case, a clear and concrete denial of access to the ballot would at least be apparent, and the petitioner could credibly allege a genuine, *prima facie* constitutional claim.

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added). As an incumbent Senator whose office was not on the ballot for the November 1990 election, Senator Roberti is permitted to run again for one additional term in the November 1992 election. Under normal circumstances, he would be expected to run again for his 23rd Senate District seat which, if successful, he could hold until *November 1996*. It may be argued that if, instead of running for reelection in his present 23rd Senate District, Senator Roberti successfully runs for election in the vacant 20th Senate District, he will have been elected to the "one additional term" permitted under the Constitution – albeit for only the remaining two years of a term.

Respondent respectfully submits that it is not presently necessary for this Court to entertain Petitioners' dispute, as none of the Petitioners is presently threatened with deprivation of any constitutional rights. When, *and if*, such a controversy can actually be shown to exist, Petitioners will have access to the federal courts for assistance.

B. Whether Or Not Required To Do So, The California Supreme Court Effectively Applied A Strict Scrutiny Analysis To The Act's Term Limitation Provisions. Therefore, Denial of the Petition Would Not Suggest This Court's Implicit Approval Of A Less Stringent Test

Article IV, § 2(a), imposes no qualification for *entering* upon the office of Senator or Member of the Assembly in the first instance; it only limits the duration in which one who *is* elected to one or the other office may serve therein. Thus, any citizen who satisfies minimal residency requirements is eligible to be elected to the office of Senator. Cal. Const., art. IV, § 2(c). But one may *serve* in the office of Senator for only four years before standing for reelection, and for only eight years *in toto*. Cal. Const., art. IV, § 2(a). Likewise, one may *serve* as a Member of the Assembly for only two years before standing for reelection, and for only six years *in toto*. (*Ibid.*)

Because a durational limit on the holding of an office perforce disqualifies *from further service* persons who have already held the office for the maximum period allowed, the court below analyzed the limitation as a "ballot access" case, looking for guidance to this Court's decision in *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Petitioners,

however, contended that the analysis should be governed by this Court's decision in *Eu v. San Francisco County Democratic Committee*, 489 U.S. 214 (1989), a case concerning state prohibition of political speech and state regulation of the internal affairs of political parties.

The Supreme Court found that the *Eu* opinion was not controlling as respects the test to be applied in analyzing the term-limitation provisions of Proposition 140. The court reasoned that, "[this Court] in *Eu* imposed such a strict standard because of the serious impact on First Amendment freedoms of speech and association, interests not as directly impacted by Proposition 140, which does not affect speech interests and which impacts all political parties on an equal basis." *Legislature v. Eu*, 54 Cal.3d at 515. Instead, the court followed the test articulated by this Court in *Anderson*. Although the court did not read *Anderson* absolutely to impose a "strict scrutiny" standard, the court observed that, "[i]n any event . . . it is unlikely we would reach a different result applying strict scrutiny to evaluate Proposition 140." *Legislature v. Eu*, 54 Cal.3d at 515.

Indeed, whether or not the court chose to characterize its application of *Anderson* as a "strict scrutiny" test, it is clear that the court did, in fact, strictly scrutinize the term-limitation provisions of the Proposition. The court set forth at length the state's interests in term limitations, *Legislature v. Eu*, 54 Cal.3d at 520-522, concluding that the limitations were "supported by legitimate and compelling considerations." *Id.* at 522. Moreover, contrary to Petitioners' assertion, the court did not "ignore[] the discussion of least drastic alternatives at the close of the *Anderson* majority opinion." Pet. at 9. To the contrary, the

court expressly noted that, "[w]ith respect to *Anderson's* requirement of showing the 'necessity' of the particular burden imposed by the state, we must also consider whether there are any less drastic alternatives to a lifetime ban." *Legislature v. Eu*, 54 Cal.3d at 517. The court expressly found that no such alternatives existed to accomplish the people's intended purpose. *Id.* at 522-525.

Respondent disputes Petitioners' contention that treatment of this case is governed by decisions analyzing state laws restricting political speech or regulating the internal affairs of political parties. Respondent believes that this case is instead governed by the reasoning in *Sugarman v. Dougall*, 413 U.S. 634 (1973), and in this Court's recent decision, *Gregory v. Ashcroft, supra*, 111 S.Ct. 2395. The term limitation provisions of article IV, § 2(a), of the California Constitution possess "the unique nature of [a] state decision[] that 'go[es] to the heart of representative government.' " *Gregory v. Ashcroft, supra*, 111 S.Ct. at 2401, quoting *Sugarman, supra*, 413 U.S. at 647. These provisions reflect the considered judgment of the people of California acting in their reserved sovereign capacity to amend their constitution. Cal. Const., art. II, §§ 1, 8; art. IV, § 1; art. XVIII, § 3.[15] " '[This Court] will not

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[15] Petitioners acknowledge that the Proposition received 52% of the votes cast. They seek to minimize that support, however, by stating that "[t]hose who voted for it constituted only 19% of those eligible to vote in California." Pet. 4. This is just another way of saying that there was only a 37% voter turnout in the election. Regrettable as the low turnout may be, it is more than sufficient under law. Indeed, such a vote pattern, on a national level, would be sufficient to elect the President of the United States.

overturn such a [law] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [people's] actions were irrational.' " *Gregory v. Ashcroft, supra,* 111 S.Ct. at 2406, quoting from *Vance v. Bradley,* 440 U.S. 93, 97 (1979). Here, it is beyond reasonable dispute that the people's choice to disqualify two-time Senate incumbents and three-time Assembly incumbents from further service in the legislature is related to the achievement of legitimate sovereign purposes.

But, even if Petitioners were correct that the test to be applied was the strict scrutiny test employed in *Eu v. San Francisco County Democratic Committee,* this Court's review of the state court's decision would nevertheless be unnecessary. As is evident from the decision, and as noted above, the California court *did* strictly scrutinize the term limitation provisions – at some length. It matters not, then, whether the court below *characterized* its "balancing test" as a "strict scrutiny" test; Petitioners, in any event, *received* the strict judicial scrutiny of the Act that they demanded.

Inasmuch as the state court effectively applied a "strict scrutiny" test to the facts, there is no need for this Court to revisit that application *de novo.* Cf., *Minnesota v. Olson,* 495 U.S. 91, 110 S.Ct. 1684, 1690 (1990), and concurring opinions of Stevens and Kennedy, JJ.. And there is, accordingly, little danger that a denial of certiorari by this Court would be construed to reflect implicit approval of a less stringent standard.

II

THE PLEA OF INDIVIDUALS AND ENTITIES OTHER THAN INDIVIDUAL LEGISLATORS AND VOTERS ADDS NOTHING TO THE PETITION; THESE REMAINING PETITIONERS LACK STANDING TO INVOKE THIS COURT'S JURISDICTION

As is the case with every federal court, this Court's jurisdiction is limited to "cases" or "controversies" within the meaning of article III of the Constitution. See e.g., *Secretary of State of MD. v. J.H. Munson Co.*, 467 U.S. 947, 954 n.4 (1984); *United States v. Raines*, 362 U.S. 17, 21 (1960). The question of standing, "focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Flast v. Cohen*, 392 U.S. 83, 99 (1968).

Respondent assumes that all of the parties named as petitioners in the proceedings below purport now to invoke the jurisdiction of this Court. See Sup. Ct. R. 12.4.[16] It is, of course, for state courts to determine the

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[16] The text of the petition identifies one Melissa Eddy as a petitioner in this Court. Pet. at 11. However, Melissa Eddy was not a party in the proceedings below. See Pet. at ii n. 1; A-1, A-2 through A-9, *post*. The basis of her asserted capacity as a purported petitioner before this Court is, therefore, unknown. The petition alleges that Proposition 140 "bars Petitioner Melissa Eddy and the thousands of other citizens who voted for Senator Davis in 1988 from the opportunity to vote for him for Senate in 1996 *or ever again*." Pet. at 11 (emphasis in original). However, Senator Davis has announced his intention to retire from legislative service rather than run for reelection. Cheevers and Gladstone, *Ed Davis Calls It Quits: "I Have Served Long Enough,"* The Los Angeles Times, January 29, 1992, Metro Section, Part B, p. 1, col. 2.

standing of litigants to raise constitutional issues in those courts. See *Williams v. Mayor*, 289 U.S. 36, 41 (1933). However, because standing for purposes of article III is a federal question, the mere fact that the Petitioners may have been parties below does not confer on them standing in this Court. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985); *Princeton University v. Schmidt*, 455 U.S. 100, 102 n (1982). It is Petitioners' burden to establish their standing to invoke this Court's jurisdiction and to overcome the presumption against such jurisdiction. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 546 (1986), quoting *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887).

Respondent respectfully submits that the state Legislature, the petitioning organizations, and many individual petitioners lack standing sufficient under article III to invoke this Court's jurisdiction.

A. The California Legislature Lacks Standing To Invoke This Court's Jurisdiction

Respondent acknowledges that this Court has accorded legislatures standing, on behalf of government, to *defend* the validity of legislative enactments in cases where the Executive was unwilling to do so. See e.g., *Karcher v. May*, 484 U.S. 72 (1987) [State legislature permitted to intervene where no member of the Executive Branch willing to defend an enacted statute]; *I.N.S. v. Chadha*, 462 U.S. 919 (1983) [Senate permitted to intervene in case where Executive had indicated its agreement that challenged statute was unconstitutional]. However, this is plainly not such a case. Here, the Legislature seeks to

invalidate state constitutional amendments which were enacted by the people and, indeed, it has sued officials of the Executive Branch for that purpose.

Respondent also acknowledges that the Legislature and its constituent houses were parties to the proceeding below. However, those proceedings involved additional state law questions in which the Legislature arguably had a justiciable interest *under the state Constitution*. In particular, those proceedings involved the question whether Proposition 140 invaded the Legislature's prerogative to propose *revisions* to the California Constitution by, among other things, imposing a ceiling on legislative expenditures and limiting legislators' terms of office. See *Legislature v. Eu, supra*, 54 Cal.3d at 506-512.

In any event, even if the state Supreme Court could be said to have permitted the Legislature to assert the rights of third parties, that fact does not determine this Court's power to do so. *Doremus v. Board of Education*, 342 U.S. 429, 434 (1952).[17] And respondent submits that the instant petition affords no basis upon which the Legislature may claim standing before this Court.

It is beyond cavil that the Constitution vests no rights in state governments which may be asserted in derogation of the sovereign power of the people. The California Legislature and its constituent houses are merely the creatures of the people of the State of California. Cal. Const., art. II, § 1; art. IV, § 1. As such, the Legislature is

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[17] The California court gave no indication of the basis for the Legislature's standing. Indeed, the issue was not briefed by the parties.

possessed of no privileges or immunities whatsoever under the Federal Constitution which may be asserted against its creator. See *Williams v. Mayor*, 289 U.S. 36, 40 (1933); *Coleman v. Miller*, 307 U.S. 433, 441 (1939).

Indeed, the Legislature does not purport to allege any right or interest possessed in itself which supports this Court's jurisdiction. Instead, the petition alleges deprivation of the First and Fourteenth Amendment rights of *individual voters* and *candidates*, and alleges that Proposition 140 unconstitutionally sought to punish *individual legislators*.[18]

It is, of course, the general rule that a federal petitioner cannot rest *its* standing upon the rights or interests of the other individual or organizational Petitioners. Rather, each petitioner must establish its standing by demonstrating unconstitutional injury to *itself*. *Valley Forge College v. Americans United*, 454 U.S. 464, 472-476 (1982); *Warth v. Seldin*, 422 U.S. 490, 498-500 (1975).

Moreover, it cannot reasonably be argued that the Legislature has standing as representative of *legislators*, adverse to the people of California. Cf., *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 344 (1977). Indeed, it would constitute a gross violation of principles of federalism for this Court to recognize standing in the Legislature to assert the rights of member legislators in derogation of the will of the people of California. A

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[18] The Legislature, as such, is not within the zone of protection of the Bill of Attainder Clause, which encompasses only individuals and private groups – "those who are particularly vulnerable to nonjudicial determinations of guilt." *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966).

"short definition of [a republican form of] Government is one constructed on this principle[:] that the Supreme Power resides in the body of the people." *Chisolm Ex'r v. Georgia*, 2 U.S. 419, 457 (1793) (Opn. of Iredell, J.)

The *Legislature's* remedy is political. If the Legislature believes it necessary to reverse or modify the changes worked by the Political Reform Act of 1990, the Legislature is expressly authorized to propose for adoption by the people a new amendment to the California Constitution for that purpose. Cal. Const., art. VIII, § 1.

B. Petitioner Organizations Have No Demonstrable Standing To Bring This Petition

Petitioners California Teachers Association (CTA) and Black American Political Association (BAPAC) similarly lack standing to invoke this Court's jurisdiction. The petition herein alleges no injury to either of these organizations which support their standing. Whatever standing they may have, therefore, "turns upon whether . . . the organizations have established actual injury to any of their members." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976).[19] An association may sue on behalf of its members if the association alleges that, as a result of the challenged action, its members are suffering immediate or threatened injury of the sort that would make out a justiciable case had the members themselves brought suit. *Warth v. Seldin, supra*, 422 U.S. 490, 511.

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[19] Petitioner organizations do not purport to allege that either they or their members were subjected to nonjudicial punishment in violation of the Bill of Attainder Clause.

In the petition below, CTA alleged only a generalized interest in education and the impact of Proposition 140 on education in California. See A-3, ¶ 9, *post*. Such a generalized interest is insufficient for article III purposes. *Asarco Inc. v. Kadish*, 490 U.S. 605, 614-615, 616 (1989).

Petitioner BAPAC alleged no infringement of its members' rights to vote, but only complained vaguely that term limits "will reduce the number of black public officials who can and will stay in office long enough to provide advice and help to members of the Association and to other African-Americans in California political life." A-3, ¶ 10, *post*. Inasmuch as BAPAC's members would have been unable to state a constitutionally cognizable case or controversy relying on such a vague political interest, BAPAC itself has no standing within the meaning of article III to assert such a claim. Furthermore, it is not likely that BAPAC's members would obtain relief from the alleged injury as a result of a favorable decision by this Court. The mere lifting of term limitations will do little to ensure a sufficient supply of African-American legislators willing "to provide advice and help to members of the Association and to other African Americans in California political life." For this reason, too, BAPAC has insufficient demonstrable standing. *Renee v. Geary, supra*, 111 S.Ct. at 2337.

C. Certain Individual Petitioners Lack Standing To Invoke This Court's Jurisdiction

The petition alleges that the term-limitation provisions of the Act violate Petitioners' rights as voters or as

candidates, or that the Act amounts to an unconstitutional bill of attainder. However, not all of the Petitioners challenged the Act on these grounds in the proceedings below.

Petitioners Hart, Huffman, Post, Seiler, and Thompson alleged no injury to their rights as voters or candidates resulting from term limitations. In the proceedings below, they complained only about aspects of the Act which are not here challenged. Petitioner Senator Hart, for example, alleged no intention to run for office at the expiration of his present four-year term. A-4, ¶ 13, *post*. Neither did he submit any declaration attesting to such an intention. Senator Hart's concern in the proceedings below was limited to his retirement benefits. *Ibid*.

Petitioner Alice Huffman alleged no injury to her right to vote, but complained only that the lack of pension benefits and "job security" resulting from term limitations would discourage her from running for office. A-7, ¶ 25, *post*. In her supporting declaration, Ms. Huffman stated: "The limitation to 8 years of service and the elimination of the Legislative Retirement System make it impossible for me to surrender a secure job with a generous pension benefit in exchange for the possibility of a short-term job with no retirement advantages."[20]

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[20] Ms. Huffman's declaration also stated her desire to vote for Assemblyman Lloyd Connelly in 1996, although "it is [her] understanding that Proposition 140 will bar him from being a candidate for re-election in 1996." However, Assemblyman Connelly was not a petitioner; nor did he submit a declaration

(Continued on following page)

Petitioner A. Alan Post sued as "the former Legislative Analyst of the State of California." There were no allegations by Mr. Post of any infringement on his rights as a voter, as a candidate, or in any other capacity. A-3, ¶ 8, *post*.

Petitioner Deborah Seiler alleged no injury to her rights as a voter. She complained only about loss of employment due to the ceiling which the Act imposed on the Legislature's operating budget. A-8, ¶ 27, *post*.

Finally, petitioner Steve Thompson alleged no injury to his rights as a voter. Mr. Thompson complained only about the Act's restrictions on the Legislature's budget and the effect thereof on the Assembly Office of Research. A-3, ¶ 30, *post*.

None of these foregoing Petitioners alleged that the Act infringed on their First or Fourteenth Amendment right of candidacy or right to vote. None, therefore, has demonstrated sufficient standing to invoke this Court's jurisdiction. See 28 U.S.C. § 1257(a).

To summarize, then: Respondent respectfully submits that the petition of the California Legislature, its constituent houses, the California Teachers Association, the Black American Political Association, Senator Gary Hart, Allice Huffman, A. Alan Post, Deborah Seiler, and Steve Thompson must be denied for lack of standing to invoke this Court's jurisdiction.

(Continued from previous page)

of any intention to run for Assembly in 1996. Moreover, Ms. Huffman's support for Assemblyman Connelly could well conflict with her own aspirations to run for office.

III

NONE OF THE PETITIONERS ALLEGES THAT HE OR SHE WAS SUBJECTED TO NONJUDICIAL PUNISHMENT IN VIOLATION OF THE BILL OF ATTAINDER CLAUSE

None of the Petitioners alleged below that he or she was the victim of nonjudicial punishment in violation of the Bill of Attainder Clause, U.S. Const., art. I, § 10, cl. 1. Nothing more was alleged than this conclusory averment:

> The legislative term limits, restrictions on legislative retirement benefits, and reductions in expenditures for the Legislature contained in Proposition 140 constitute a bill of attainder prohibited by Article II [*sic*], section 10 of the Constitution of the United States. The text of the measure, the arguments submitted in the ballot pamphlet, and campaign speeches made and materials distributed by is proponents leave no doubt that the initiative was intended to punish members of the Legislature, particularly Petitioners Brown and Roberti.

A-14, ¶ 52, *post*.

Petitioners Brown and Roberti, however, did not allege that they alone were *singled out* for punishment; it is beyond dispute that the term-limitation provisions of Proposition 140 *apply without regard to the identity of the incumbent office holder*. The California Supreme Court concluded that "the ballot arguments contain no indication of an intent to *punish* [Messrs Brown or Roberti] for any past misconduct. Broad reform measures are frequently prompted by particular acts or circumstances involving specific individuals. . . . " *Legislature v. Eu, supra*, 54 Cal.3d at 527 (emphasis in original); see also, *Collin v.*

Smith, 447 F.Supp. 676, 682 n.4 (N.D.Ill 1978) ["A law of general applicability is not unconstitutional [as a bill of attainder] merely because its enactment was inspired by a specific example of the evil which it seeks to suppress"], *aff'd on other grounds*, 578 F.2d 1196 (7th Cir. 1978), *cert. denied*, 439 U.S. 916 (1978).

Before this Court, Petitioners acknowledge that, "Proposition 140 on its face applies to all future incumbents," but aver that "the motivation for its adoption . . . was punishment of . . . present incumbents." Pet. at 23. Respondent submits that, on its face, the petition fails to demonstrate a case or controversy under the Bill of Attainder Clause. Whether or not dissatisfaction with Petitioners Roberti and/or Brown was a motivation for passage of the proposition, the undeniable fact is that these Petitioners were not singled out as regards the *effect* of Proposition 140's terms.

CONCLUSION

For the reasons stated, the Court should deny the petition for certiorari.

DATED: February 7, 1992

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of the
State of California
ROBERT L. MUKAI
Chief Assistant Attorney General
FLOYD D. SHIMOMURA
Assistant Attorney General
(Acting)
DANIEL G. STONE
Deputy Attorney General

MANUEL M. MEDEIROS*
Deputy Attorney General

Attorneys for Respondent
March Fong Eu
Secretary of State

*Counsel of Record

APPENDIX

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE LEGISLATURE OF THE STATE OF CALIFORNIA, THE SENATE OF THE STATE OF CALIFORNIA, THE ASSEMBLY OF THE STATE OF CALIFORNIA,	)	No. S019660
DAVID ROBERTI, WILLIE BROWN, JR., KENNETH L. MADDY, WILLIAM A. CRAVEN,	)	*PETITION FOR WRIT OF MANDATE AND/ OR PROHIBITION*
A. ALAN POST,	)	
ED DAVIS, CECIL GREEN, GARY K. HART, BILL LOCKYER, DAN MCCORQUODALE, ROBERT B. PRESLEY, DIANE WATSON,	)	
BRUCE BRONZAN, PETER R. CHACON, JIM COSTA, DAN E. HAUSER, JOHAN KLEHS, BARBARA LEE, LUCILLE ROYBAL-ALLARD,	)	
ALICE HUFFMAN, AURORA CASTILLO, DEBORAH SEILER, MARSHALL SHARPE, PERCY STEELE, STEVE THOMPSON, NEWTON WALLACE,	)	
Petitioners,	)	
v.	)	
MARCH FONG EU, SECRETARY OF STATE; GRAY DAVIS,	)	

CONTROLLER; BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM; CONNY MCCORMACK, SAN DIEGO COUNTY REGISTRAR OF VOTERS,

Respondents.

TO THE HONORABLE MALCOLM M. LUCAS, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Each of the petitioners brings this petition for writ of mandate and/or prohibition in response to passage of Proposition 140 at the November 6, 1990 general election Proposition 140 amended the California Constitution to impose term limits on legislative and other statewide offices, to reduce and limit the Legislature's budget by approximately 38%, and to prohibit legislators from participating in any retirement system other than federal Social Security. The measure violates both the state and federal Constitutions, and is the appropriate subject of this Court's original jurisdiction, for the reasons that petitioners allege as follows:

PARTIES

1. Petitioner LEGISLATURE OF THE STATE OF CALIFORNIA is the duly constituted legislative body of California, and that institution granted all the bicameral powers, and charged with the proper performance of all

the bicameral duties, of the legislative branch of the government of the State of California by Article IV, § 1 and related provisions of the California Constitution.

2. Petitioner SENATE OF THE STATE OF CALIFORNIA is the duly constituted Senate of the State of California, and is that institution granted all of the unicameral powers, and charged with the proper performance of all of the unicameral duties, of the Senate by Article IV, § 1 and related provisions of the California Constitution.

3. Petitioner ASSEMBLY OF THE STATE OF CALIFORNIA is the duly constituted Assembly of the State of California, and is that institution granted all of the unicameral powers, and charged with the proper performance of all of the unicameral duties, of the Assembly by Article IV, § 1 and related provisions of the California Constitution.

4. Petitioner DAVID ROBERTI is President Pro Tempore of the California Senate and Senator for the 23rd Senate District. He is a Democrat who has been a member of the Senate since 1971 and served in the California Assembly from 1966 to 1971. He is a member of the Legislators' Retirement System ("LRS") of the State of California, and, until November, 1990, he made regular contributions thereto, as did the state on his behalf. He is a citizen and resident of the City of Los Angeles. Senator Roberti plans to seek reelection in 1992, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1996.

5. Petitioner WILLIE L. BROWN, JR. is Speaker of the California Assembly and Assembly member for the 17th Assembly District. He is a Democrat who has been a

member of the Assembly since 1964 and Speaker since 1980. He is a member of the Legislators' Retirement System, and, until November, 1990, he made regular contributions thereto, as did the state on his behalf. He is a citizen and resident of the City and County of San Francisco. Speaker Brown plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by proposition 140, would seek reelection to the Assembly in 1996.

6. Petitioner KENNETH L. MADDY is the Republican Leader of the California Senate and represents the 14th Senate District. He has served in the Senate since 1979 and was a member of the California Assembly from 1970 to 1979. He is a member of the Legislators' Retirement System, and, until November, 1990, he made regular contributions thereto, as did the state on his behalf. He is a citizen and resident of the City of Fresno. Senator Maddy plans to seek reelection in 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

7. Petitioner WILLIAM A. CRAVEN is the Senator from the 38th Senate District. He has served in the Senate since 1978 and was a member of the Assembly from 1973 to 1978. He is a member of the Legislators' Retirement System, and, until November, 1990, made regular contributions thereto, as did the state on his behalf. He is a Republican and vice-chairman of the Senate Elections and Reapportionment Committee and the Senate Rules Committee. Senator Craven plans to seek reelection in 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

8. Petitioner A. ALAN POST is a resident of the State of California and a taxpayer. He is the former Legislative Analyst of the State of California, having served in that position from 1949 through 1977.

9. Petitioner CALIFORNIA TEACHERS ASSOCIATION represent more than 177,000 teachers in the state of California. The association and its members have a strong and continuing interest in the quality of education in this state and in legislation affecting education. The imposition of term limits and severe budget cuts will result in a Legislature less equipped to respond to the educational needs of the children of this state and one less able and willing to respond to the local educational needs that members of the Legislature have historically worked to serve.

10. Petitioner BLACK AMERICAN POLITICAL ASSOCIATION OF CALIFORNIA is a membership organization composed of black elected public officials in the state of California. The organization itself and its members have benefited from association with experienced black elected legislative leaders African American Californians have historically had more difficulty in achieving political office. The imposition of term limits will reduce the number of black public officials who can and will stay in office long enough to provide advice and help to members of the Association and to other African Americans in California political life.

11. Petitioner ED DAVIS is the Senator for the 19th Senate District. He has served in the Senate since 1980 and is a member of, and, until November 1990, made

regular contributions to the Legislators' Retirement System for ten years, as did the state on his behalf. He is a Republican and vice-chairman of the Senate Judiciary Committee. He is a citizen and resident of the City of Valencia. Senator Davis plans to seek reelection in 1992, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1996.

12. Petitioner CECIL GREEN is the Senator for the 33rd Senate District. He is a Democrat and has served in the Senate since 1987, representing a Los Angeles area district. He is a member of the Legislators' Retirement System, and, until November, 1990, he regularly made contributions thereto, as did the state on his behalf. Senator GREEN plans to seek reelection in 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

13. Petitioner GARY K. HART is the Senator for the 18th Senate District. He is a Democrat and has served in the Senate since 1982, representing a Santa Barbara district. From 1974 to 1982 he served in the Assembly. He is a member of the Legislators' Retirement System, and, until November, 1990, regularly made contributions thereto, as did the state on his behalf. He was born on August 13, 1943. On January 1, 1991, but for the effects of Proposition 140, he would have had 16 years' credited service in the LRS. In 1990, upon achieving 15 years' credited service, he became eligible for early retirement with full benefits less 2% for each year under age 60 by virtue of the provisions of section 9359.16 of the Government Code. Proposition 140 prevents him from continuing to accrue service, and therefore from fully accruing this benefit, because years of credited service are part of

the formula upon which his retirement benefits would be based were it not for Proposition 140.

14. Petitioner BILL LOCKYER is the Senator for the 10th Senate District. He has served in the Senate since 1982 and was a member of the Assembly from 1973 to 1982. He is a Democrat and chairman of the Senate Judiciary Committee. He is a member of the Legislators' Retirement System, and, until November, 1990, he made regular contributions thereto, as did the state on his behalf. He is a citizen and resident of the City of Hayward. Senator Lockyer plans to seek reelection in 1994 and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

15. Petitioner DAN McCORQUODALE is the Senator from the 12th Senate District. He is a Democrat and has served in the Senate since 1982, representing a San Jose area district. He is a member of the Legislators' Retirement System, and, until November, 1990, regularly made contributions thereto, as did the state on his behalf. Senator McCORQUODALE plans to seek reelection in 1994 and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998. He will be 60 years of age on December 17, 1994 and eligible for retirement under the LRS. But for Proposition 140 and the resultant actions of respondents Controller and Public Employees Retirement System ("PERS"), he would then have been credited with 12 years' service in the LRS and eligible for retirement benefits at a higher rate because he would have been credited for service between 1991 and 1994.

16. Petitioner ROBERT B. PRESLEY is the Senator from the 36th Senate District. He has served in the Senate since 1974. He is a member of the Legislators' Retirement System, and, until November, 1990, made regular contributions thereto, as did the state on his behalf. He is a Democrat and chairman of the Senate Appropriations Committee and the Joint Legislative Committee on Prison Construction and Operations. Senator Presley plans to seek reelection in 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

17. Petitioner DIANE WATSON is the Senator for the 28th Senate District. She has served in the Senate since 1978, representing a district in Los Angeles composed largely of members of minority races. She is a member of the Legislators' Retirement System, and, until November, 1990, she regularly made contributions thereto, as did the state on her behalf. She is Democrat and chairs the Senate Health and Human Services Committee. She is a citizen and resident of Los Angeles. Senator Watson plans to seek reelection in 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Senate in 1998.

18. Petitioner BRUCE BRONZAN is the Assembly member from the 31st Assembly District. He is a Democrat and has served in the Assembly since 1982, representing a Fresno area district. He is a member of the Legislators' Retirement System, and, until November, 1990, he regularly made contributions thereto, as did the state on his behalf. Petitioner BRONZAN plans to seek reelection in 1992 and 1994 and, but for the term limits imposed by Proposition 140, would seek reelection to the

Assembly in 1996. He will be 51 years old on September 28, 1998. If reelected, in the absence of Proposition 140 he would have in 1998 sixteen years' credited service under the LRS and be eligible for early retirement less 18% (2% x 9 years). Proposition 140 purports to prevent him from accruing this benefit.

19. Petitioner PETER R. CHACON is the Assembly member from the 79th Assembly District. He is a Democrat and has served in the Assembly since 1970, representing a San Diego area district. He is a member of the Legislators' Retirement System and, until November, 1990, he regularly made contributions thereto, as did the state on his behalf. Petitioner CHACON plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996.

20. Petitioner JIM COSTA is the Assembly member from the 30th Assembly District. He is a Democrat and has served in the Assembly since 1978, representing a Fresno area district. He is a member of the Legislators' Retirement System, and, until November, 1990, he regularly made contributions thereto, as did the state on his behalf. Petitioner COSTA plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996. If reelected, in 1998 he will be 46 years of age and would have had, but for the effects of proposition 140, 20 years' credited service in the LRS. At that time he would have been eligible for early retirement with full benefits. Proposition 140 purports to prevent him from accruing this benefit.

21. Petitioner DAN E. HAUSER is the Assembly member from the 2nd Assembly District. He is a Democrat and has served in the Assembly since 1982, representing a district in the Eureka area. He is a member of The Legislators' Retirement System, and, until November, 1990, he regularly made contributions thereto, as did the state on his behalf. Petitioner HAUSER plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996. He was born on June 18, 1942. By June 18, 1992 he will be 50 years of age and within 10 years of the LRS's retirement age. By that time, but for the effects of Proposition 140, he would have been credited with at least eight years of service under the LRS and eligible for state contributions, before and during retirement, to health care and dental care plans. Proposition 140 purports to prevent him from accruing this benefit.

22. Petitioner JOHAN KLEHS is the Assembly member from the 14th Assembly District. He has served in the Assembly since 1982, representing a district in Alameda County. He is a Democrat and Chairman of the Assembly Revenue and Taxation Committee. Petitioner KLEHS plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996. He is informed by respondent EU that her office will refuse to accept his declaration of intention to be a candidate for Assembly in 1996 because election to such a term is barred by Proposition 140.

23. Petitioner BARBARA LEE is the Assembly member from the 13th Assembly District. She was elected to the Assembly on November 6, 1990, and is serving her

first term in the Legislature. Petitioner LEE is a Democrat who represents an Alameda County district that includes the City of Oakland and that is composed largely of members of minority races. She would not have sought election to the Assembly had she known that her ability to influence events would be constrained by an arbitrary six year term limit rather than by her constituents' satisfaction with her performance. Petitioner LEE plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996.

24. Petitioner LUCILLE ROYBAL-ALLARD is the Assembly member from the 56th Assembly District. She is a Democrat who has served in the Assembly since 1987, representing a district in Los Angeles. She is a member of the Legislators' Retirement System, and, until November, 1990, she regularly made contributions thereto, as did the state on her behalf. Petitioner ROYBAL-ALLARD plans to seek reelection in 1992 and 1994, and, but for the term limits imposed by Proposition 140, would seek reelection to the Assembly in 1996. If reelected, by 1998 she will be 57 years old, within 10 years of the LRS's retirement age, and, except for the effects of Proposition 140, would have been credited with more than eight years of service in the LRS. At that time she would have been eligible for state contributions, before and during retirement, to health and dental care plans. Proposition 140 purports to prevent her from accruing this benefit.

25. Petitioner ALICE HUFFMAN is a resident and duly qualified elector of the County of Sacramento. She is currently employed as Associate Executive Director for

Governmental Relations for the California Teachers Association, is earning more than the salary of a member of the Legislature, and benefits from a pension plan in addition to her participation in federal Social Security. She is considering whether to run for the Senate in 1992, but for personal financial reasons will be unable to do so if the provisions of Proposition 140 are in effect. She wishes to file a declaration of candidacy, but cannot file a declaration under penalty of perjury stating her intention to run until she knows whether Proposition 140 will be in effect.

26. Petitioner AURORA CASTILLO is a duly qualified elector, voter and taxpayer of the County of Los Angeles, California and the 56th Assembly District. She is a supporter of, has voted for, and wants again to vote for, petitioner LUCILLE ROYBAL-ALLARD, whose tenure and leadership have in petitioner CASTILLO's opinion made petitioner ROYBAL-ALLARD an extremely effective representative for her constituents. As a Latina, petitioner CASTILLO believes that it will be extremely difficult to obtain the same effectiveness of representation of her interests from any other candidate for the Assembly and that her interests as a voter and constituent will be unconstitutionally impaired if she is prevented from reelecting petitioner ROYBAL-ALLARD to the Assembly because of the term limits imposed by Proposition 140.

27. Petitioner DEBORAH SEILER is a citizen and resident of the State of California and a taxpayer. From September 1985 until January 31, 1991, she was employed as the Chief Consultant to the Assembly Elections, Reapportionment and Constitutional Amendments Committee. Prior to her employment by the Assembly, petitioner SEILER was the Assistant Secretary of State for Elections

and Political Reform. She left her job with the Assembly because of the budget cuts required by Proposition 140.

28. Petitioner MARSHALL SHARPE is a duly qualified elector and voter of the 79th Assembly District. He is a constituent and supporter of petitioner PETER R. CHACON, has voted for him in the past, wants to vote for her in the future, and believes that his tenure and leadership have made him an extremely effective representative of his constituents. Petitioner SHARPE is an African American who believes that it will be extremely difficult to obtain the same effectiveness of representation of minority interests from any candidate for the Senate other than petitioner CHACON and that his interest as a voter and constituent will be unconstitutionally impaired if he is prevented from reelecting petitioner CHACON to the Assembly because of the term limits imposed by Proposition 140.

29. Petitioner PERCY STEELE is a duly qualified elector and voter of the 17th Assembly District. He is a constituent and supporter of petitioner WILLIE L. BROWN, JR., has voted for him in the past, wants to vote for him in the future, and believes that his tenure and leadership, especially as Speaker of the Assembly, have made him an extremely effective representative of his constituents. Petitioner STEELE is an African American who believes that it will be extremely difficult to obtain the same effectiveness of representation of minority interests from any candidate for the Assembly other than petitioner BROWN and that his interests as a voter and constituent will be unconstitutionally impaired if he is prevented from reelecting petitioner BROWN to the

Assembly because of the term limits imposed by Proposition 140.

30. Petitioner STEVE THOMPSON is a citizen and taxpayer of the State of California. Since 1985, he has been employed as the Director of the Assembly Office of Research. The budget cuts required by Proposition 140 drastically reduce the ability of his office to provide the Assembly with information needed for its deliberative process.

31. Petitioner NEWTON WALLACE is a duly qualified elector and voter of the 4th Assembly District and the 2nd Senate District. He is a constituent and supporter of Assembly member Thomas M. Hannigan and Senator Barry Keene, has voted for each of them in the past, wants to vote for each of them in the future, and believes that their respective tenures and leadership have made them extremely effective representatives of their constituents. Petitioner WALLACE believes that it will be extremely difficult to obtain the same effectiveness of representation of his interests from any candidate for the Assembly other than Mr. Hannigan or from any candidate for the Senate other than Mr. Keene and that his interest as a voter and constituent will be unconstitutionally impaired if he is prevented from reelecting Mr. Hannigan to the Assembly or Mr. Keene to the Senate because of the term limits imposed by Proposition 140.

32. Respondent MARCH FONG EU is the Secretary of State of the State of California. She has advised petitioners that she will refuse to certify and will advise local

registrars to refuse to accept, any declaration of candidacy from any candidate who would not be eligible to serve pursuant to Proposition 140.

33. Respondent GRAY DAVIS is Controller of the State of California and responsible for issuing warrants drawn on the state treasury for expenditures authorized by the Rules Committees of the Assembly and the Senate. Respondent DAVIS will not issue warrants in amounts greater than those constitutionally permitted by Proposition 140. He is also responsible for issuing warrants in the form of paychecks to individual members of the Legislature, which reflect the amount of their contributions to the Legislators' Retirement System, and for depositing into the Legislators' Retirement Fund both members' contributions and the state contributions required by statute. Since November 21, 1990, he has refused to issue paychecks to members of the Legislature that make deductions for members' contributions to the Legislators' Retirement System and has refused to deposit into the Legislators' Retirement Fund either members' or state contributions.

34. Respondent BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM ("PERS") is the agency responsible for administering the Legislators' Retirement System and for crediting service to the accounts of petitioners and other members of the LRS. Since November, 1990, PERS has refused to credit petitioners for service in the Legislature by reason of the provisions of Proposition 140.

35. Respondent CONNY MCCORMACK is Registrar of Voters of San Diego County. She has advised

petitioners that she will refuse to accept declarations of candidacy from candidates who are ineligible by reason of Proposition 140.

FACTUAL ALLEGATIONS

36. On June 27, 1990, respondent EU certified Proposition 140 as having sufficient petition signatures to appear on the November general election ballot. On November 6, 1990, Proposition 140 was approved by 52.17% of those who voted in the general election. Pursuant to Article II, section 10(a) of the California Constitution, the measure became effective the day after the election, except for those provisions that provide otherwise. A true and correct copy of the measure, together with the ballot pamphlet materials submitted to the voters, appears as Exhibit A to the Memorandum of Points and Authorities in Support of this Petition (hereafter "Exh. A.")

37. Proposition 140 was presented to the voters as an initiative constitutional amendment with three principal components:

a. The measure provides that no Senator may serve more than two four-year terms and no member of the Assembly may serve more than three two-year terms. The limitation is not restricted to consecutive terms, but constitutes a life-time prohibition that prevents any individual who has served the maximum number of terms from ever serving in the Senate or the Assembly again. The measure also prevents statewide constitutional officers, with the exception of the Insurance Commissioner, from serving more than two four-year terms.

b. The measure provides that legislators elected to the Legislature or serving in it on or after November 1, 1990, shall participate in the federal Social Security system and the state shall pay only the employer's share necessary to that program. Contributions by or on behalf of legislators to the Legislators' Retirement System after the effective date of the measure are prohibited, and the measure specifically provides that "[n]o other pension or retirement benefit shall accrue as a result of service in the Legislature, such service not being intended as a career occupation." (Exh. A, section 4.) Retirement benefits for other statewide officers are not affected.

c. The measure provides that in the 1990-91 fiscal year "the total aggregate expenditures of the Legislature for the compensation of members and employees of, and the operating expenses and equipment for, the Legislature may not exceed an amount equal to nine hundred fifty thousand dollars ($950,000) per member for that fiscal year or 80 percent of the amount of money expended for those purposes in the preceding fiscal year whichever is less." (Exh. A, section 5.) The measure limits future increases in expenditures for the Legislature to "an amount equal to the percentage increase in the appropriations limit for the state established pursuant to Article XIIIB [of the California Constitution]." (Ibid.)

38. The measure also contains a declaration of purpose, which makes clear that it is directed almost exclusively at incumbent legislators. The declaration, which is to be added as section 1.5 of Article IV of the California Constitution, reads in part:

> The ability of legislators to serve unlimited number of terms, to establish their own retirement system, and to pay for staff and support

services at state expense contribute heavily to the extremely high number of incumbents who are reelected. These unfair incumbent advantages discourage qualified candidates from seeking public office and create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. These career politicians become representatives of the bureaucracy, rather than of the people whom they are elected to represent.

To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed upon the number of terms which may be served.

(Exh. A, section 2.)

FIRST CAUSE OF ACTION
(Constitutional Revision)

39. Since 1849, the California Constitution has provided a system of government comprised of three coequal branches – legislative, executive, and judicial. (Article III, § 3.) Although not entirely separate, the powers of one branch may not be exercised by another, and like the federal system, the three branches counterbalance and control one another through a careful scheme of checks and balances. Proposition 140 so weakens the Legislature that it works a far-reaching and fundamental change in our structure of government and disrupts and destabilizes the careful balance among the three branches. Such a

change amounts to a constitutional revision and cannot be done by constitutional amendment. (Article XVIII.)

SECOND CAUSE OF ACTION
(Single Subject)

40. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 39 above.

41. Proposition 140 violates Article II, section 8(d) of the California Constitution, which provides that an initiative embracing more than one subject may not be submitted to the voters or have any effect.

42. In order to satisfy the single subject rule, the provisions of an initiative must be functionally related to one another or reasonably germane to the general purpose or object of the initiative Proposition 140 has three distinct components that are not functionally related to one another. Further, it has at least two distinct objects or purposes: to limit the powers of incumbency and to restrict legislative spending. These disparate elements are included within the measure solely for the purpose of pooling the votes of those electors who favor term limits with those who favor reductions in expenditures by state government. Combining them into one measure violates the single subject rule and makes the initiative void and of no effect.

43. The changes wrought by Proposition 140 profoundly alter the structure of government in California. Where an initiative so thoroughly affects the governmental structure, close application of the single subject rule is necessary to prevent passage of measures more

sweeping than the majority of voters actually intend. Stricter scrutiny of a constitutional amendment is necessary to prevent a misuse of the initiative process.

THIRD CAUSE OF ACTION
(Violation of the First Amendment)

44. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 43 above.

45. The limits on the number of terms that may be served by members of the Legislature impermissibly infringe upon petitioners' fundamental rights to run for elective office, to vote and to associate, rights protected under the First and Fourteenth Amendments to the Constitution of the United States. By banning for life any individual from serving more than six years in the Assembly or eight years in the Senate, the term limits of Proposition 140 prohibit voters from returning to office those whom they believe have served them most effectively and faithfully, and functionally prohibit such voters from speaking or associating for that purpose.

46. Unless the term limits are declared unconstitutional, petitioner ALICE HUFFMAN will be unable to declare her intention to run for legislative office or to receive campaign contributions for that purpose. Senators ROBERTI, MADDY, CRAVEN, DAVIS, LOCKYER, PRESLEY, WATSON, GREEN, HART, and MCCORQUODALE and Assembly members BROWN, BRONZAN, CHACON, COSTA, HAUSER, KLEHS, LEE, and ROYBAL-ALLARD, and all of their colleagues currently in the Legislature will be unable to make plans for the introduction of

legislation whose passage may take a sustained effort over years to obtain. Petitioners AURORA CASTILLO, PERCY STEELE, MARSHALL SHARPE, and NEWTON WALLACE, and voters like them throughout the state, will be unable to decide whether to continue to support their incumbent Legislators and to work for their reelection. The rights of petitioners and millions of voters and constituents will be irreparably injured if Proposition 140 is allowed to go into effect.

FOURTH CAUSE OF ACTION
(Equal Protection)

47. Petitioners reallege and incorporate by reference if fully set forth herein the allegations contained in paragraphs 1 through 46 above.

48. The legislative term limit provisions of Proposition 140 unconstitutionally infringe upon the rights of petitioners CASTILLO, STEELE, SHARPE, and WALLACE to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States, under the Privileges and Immunities Clause of Article IV, section 2 of the United States Constitution, and under Article I, section 7 of the California Constitution. Petitioner PERCY STEELE has long supported and wishes to continue to support his representative in the 17th district of the Assembly, who was reelected to office in 1990 by a majority of 64.19%. Petitioner STEELE and a majority of other voters in his Assembly District voted against Proposition 140. Despite their opposition to the measure and their support for their Assemblyman, they now find themselves prevented from voting for the candidate of

their choice due to term limitations imposed by a bare majority of voters outside their district, who purport to dictate to them whom they can and cannot support for reelection

49. The term limits of Proposition 140 deny to the legislative Petitioners the equal protection of the law by singling out for disparate and invidious treatment a class of incumbent legislators who have served the number of terms permitted by the measure and who are prohibited by the measure from ever running again. The term limit provisions of Proposition 140 have the same disparate impact on supporters of incumbents as alleged above.

50. By singling out legislators and denying them participation in the Legislators' Retirement System, while allowing other state constitutional officers to continue to participate, the initiative denies legislators the equal protection of the law. A scheme that removes all such benefits from legislators while allowing other constitutional officers to remain in the system is wholly irrational.

51. Unless the legislative term limit and retirement provisions of Proposition 140 are declared unconstitutional, petitioners' rights to equal protection and the enjoyment of the privileges and immunities of citizenship will be irreparably injured.

FIFTH CAUSE OF ACTION
(Bill of Attainder)

52. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 51 above.

53. The legislative term limits, restrictions on legislative retirement benefits, and reductions in expenditures for the Legislature contained in Proposition 140 constitute a bill of attainder prohibited by Article II [sic], section 10 of the Constitution of the United States. The text of the measure, the arguments submitted in the ballot pamphlet, and campaign speeches made and materials distributed by its proponents leave no doubt that the initiative was intended to punish members of the Legislature, particularly petitioners BROWN and ROBERTI.

SIXTH CAUSE OF ACTION
(Contract Clause)

54. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 53 above.

55. The prohibition on continuing participation in the Legislators' Retirement System contained in section 4 of Proposition 140 violates vested contractual rights of members of the Legislature who were elected before November 1, 1990, in violation of the Contract Clause contained in Article II, section 10 of the Constitution of the United States, by depriving them of their vested rights to continue to contribute to the LRS, to continue to benefit from state contributions, and to become eligible for all the length-of-service benefits of the LRS that they would enjoy but for the provisions of Proposition 140.

56. Unless ordered to do otherwise by this Court, respondents will continue to deny petitioners their right to make contributions to the Legislators' Retirement System, and will continue to withhold state contributions to

petitioners' accounts and will continue to refuse to credit petitioners' LRS accounts for legislative service.

SEVENTH CAUSE OF ACTION
(Guaranty Clause)

57. Petitioners reallege and incorporate by reference if fully set forth herein the allegations contained in, paragraphs 1 through 56 above.

58. The provisions of Proposition 140 violate the Guaranty Clause of article IV, section 4 of the Constitution of the United States, which guarantees to every state a republican form of government. A republican form of government is a representative one, in which the citizens elect a smaller number of individuals to represent them in enacting laws and overseeing their enforcement. Two principles are central to the definition of republican government: the right of each citizen to vote for the candidate of his or her choice and the relative equality and separation of powers among the three branches of government. The measure prohibits voters from voting for the candidates of their choice and alters the balance of power among the three branches so that the Legislature is unable to perform its constitutional functions, in violation of the Guaranty Clause.

EIGHTH CAUSE OF ACTION
(Impairment of Essential Government Functions)

59. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 58 above.

60. The term limits and budget cuts imposed by Proposition 140 render the Legislature unable to perform adequately its constitutional functions to set state policy, review and enact legislation, and oversee the activities of the executive and judicial branches as contemplated by the California Constitution. The initiative process may not be used to enact a measure which will greatly impair or wholly destroy an essential government function, and the measure is therefore void.

NINTH CAUSE OF ACTION
(Necessity for Mandamus)

61. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 60 above.

62. If the provisions of Proposition 140 are allowed to go into effect, petitioners and each of them will be irreparably injured and their constitutional rights impermissibly impaired. Petitioners have no plain, speedy or adequate remedy at law. Regardless of their opinion of the measure's validity, state agencies are barred by Article III, section 3.5 of the California Constitution from declaring the initiative unconstitutional or refusing to enforce it. Unless ordered to do otherwise by this Court, respondents will continue to implement the provisions of Proposition 140, and petitioners' rights will be gravely impaired.

63. Original relief in this Court is appropriate because the novel questions presented are of broad public interest and require speedy resolution. The Legislature

has already lost large numbers of employees in anticipation of the budget cuts that take effect July 1, 1991, and faces imminent loss of many more. This injury is irreparable. The term limits are having an immediate adverse effect on the capacity of legislators to plan future candidacies and to develop long-term legislative programs. Finally, respondents have since November been barred from accepting or making contributions to the Legislators' Retirement System, causing immediate and irreparable injury to the legislator petitioners. Adjudication in any lower court will delay final resolution of petitioners' challenge to the measure. Such delay is not in the interests of the government or the people of California.

WHEREFORE, petitioners pray for relief as follows:

1. That this Court issue its alternative writ of mandate or prohibition ordering Respondents (a) not to enforce any of the provisions of Proposition 140, *OR* (b) to show cause why a peremptory writ should not issue as set forth above;

2. That this Court set this matter for hearing at the earliest time consistent with its calendar;

3. That upon hearing and return, this Court issue its peremptory writ as prayed above;

4. That upon hearing and return, this Court declare the initiative null, void, and of no effect in its entirety; and

5. That this Court grant petitioners their costs and fees and such other and further relief as is just.

DATED: February 21, 1991

Respectfully submitted,
JOSEPH REMCHO
ROBIN B. JOHANSEN
LOWELL FINLEY
BARBARA A. BRENNER
CHARLES C. MARSON
REMCHO, JOHANSON
& PURCELL

DENISE HULETT
ANTONIA HERNANDEZ
MEXICAN AMERICAN
LEGAL DEFENSE AND
EDUCATIONAL FUND

By /s/ ROBIN B. JOHANSEN
Attorneys for Petitioners

VERIFICATION

As the President Pro Tempore of the Senate of the State of California, I am an officer of the California Legislature. I am also an individual petitioner herein. I make this verification in my official and individual capacities.

I have read the foregoing Petition for Writ of Mandate and/or Prohibition and know its contents. The facts alleged in the petition are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of February, 1991, at Sacramento, California.

Legislature of the State of California

By /s/ David A. Roberti
President Pro Tempore of the Senate

VERIFICATION

As the Speaker of the Assembly of the State of California, I am an officer of the California Legislature. I am also an individual petitioner herein. I make this verification in my official and individual capacities.

I have read the foregoing Petition for Writ of Mandate and/or Prohibition and know its contents. The facts alleged in the petition are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of February, 1991, at Sacramento, California.

Legislature of the State of California

By /s/ Willie L. Brown
Speaker of the Assembly

VERIFICATION

I am one of the petitioners in this action. I have read the foregoing Petition for Writ of Mandate and/or Prohibition and know its contents. The facts alleged in Paragraph 29 of the petition are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed this 20th day of February, 1991 at San Francisco, California.

/s/ Percy H. Steele, Jr.

VERIFICATION

I, ROBIN B. JOHANSEN hereby declare as follows:

I am one of the attorneys for Petitioners herein and I make this verification because the Petitioners are absent from the county in which I have my office.

I have read the foregoing PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION and know the contents thereof. I certify that the same is true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 1991 at San Francisco, California.

/s/ Robin B. Johansen